

**REMARKS**

With this response, claims 1-54 are pending. Claims 19-37, 45-52, 55, and 56 are withdrawn from consideration by Restriction under 35 U.S.C. § 121. Claims 1-3, 6-10, 12, 15-17, 38-40, 42, 44, 53, and 54 are rejected. Claims 4, 5, and 18 are objected to. Claims 41 and 43 are allowed.

The present invention relates to compounds that inhibit the activity of protein kinases.

**Restriction under 35 U.S.C. § 121**

The Examiner has acknowledged Applicant's election with traverse of Group 1 claims 1-18, 38-44, 53, and 54. Applicant reserves the right to file further divisional applications to claim the subject matter of the withdrawn claims.

**Rejection under 35 U.S.C. § 112**

Claims 14, 16, 17, 42, 44, 53, and 54 were rejected under 35 U.S.C. § 112 as indefinite.

Claims 14, 16, 17, 42, 44, 53, and 54 have been amended to remove indefinite language as follows:

- a. claims 14, 16, 42, 44, and 54 replaced the word "comprising" with the term "according to claim ~~comprising~~ consisting of one of the following:";
- b. claim 17 was written as an independent claim removing reference to claim 1;
- c. claim 53 was written to read as a "pharmaceutical composition"; and
- d. claim 44 was written to include species having the structure of the compounds of Formula 1a and 1b and species appearing in claim 42 were removed.

Applicants respectfully request that the amendments to claims 14, 16, 17, 42, 44, 53, and 54 be entered. It is believed that entry of said amendments to claims 14, 16, 17, 42, 44, 53, and 54 places the claims in condition for allowance.

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Rejection under 35 U.S.C. § 103

Claims 1-3, 6-10, 12, 15, 38-40, and 53 were rejected under 35 U.S.C. § 103 as obvious over Munchhof (6492383) in view of Luzzio (US 2002/00004511).

For the reasons set forth hereinbelow, it is respectfully submitted that the applied references neither teach nor render the claimed invention obvious.

The claims of the current invention are directed to compounds having a cyano substituted thienopyridine core with an additional substitution X-R<sup>1</sup>, wherein X is -NH-, -NR<sub>4</sub>-, -O-, -S(O)m-, NHCH<sub>2</sub>- and R<sup>1</sup> is an optionally substituted phenyl ring.

The Examiner takes the position that Munchhof generically discloses a thienopyridine compound useful as anticancer agent (Paper No./MailDate 6182004, page 5).

The Examiner states that Luzzio, in a similar thienopyridine anticancer compound, teaches that hydrogen and cyano are optional choices (Paper No./MailDate 6182004, page 6).

To establish a *prima facie* case of obviousness, there must be:

1. some suggestion or motivation to modify the reference or to combine reference teachings;
2. a reasonable expectation of success; and
3. must teach or suggest all the claim limitations. (M.P.E.P. § 2143, 2100-129, Rev. 2, May 2004)

The Examiner's statements regarding the disclosure in Munchhof and Luzzio does not suggest that either reference taken alone would teach or suggest all the claim limitations of the current invention. The Examiner requires Munchhof and Luzzio must be combined to arrive at the claimed invention. The Examiner must provide reasons why one of ordinary skill in the art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. *Ex parte Akamatsu*, 22 USPQ2d 1915, 1923 (BPAI 1992). Combining the references does not fill the gap. Obviousness 'cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination.' In re Fine, 837 F.2d 1071 at 1075, USPQ2d 1596 at 1598 (citing *ACS Hosp. Sys. V. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

Munchhof is assigned to Pfizer Inc. and Luzzio gives Pfizer Inc. as the correspondence address. Luzzio further incorporates by reference attorney number PC9882B (filed February

10, 2000) (page 1 paragraph 0003), the date Munchhof was filed. Luzzio does not suggest or teach combination with Munchhof to arrive at the compounds of applicant's invention. Luzzio does not exemplify compounds of applicant's invention despite the reference to Munchhof. Not only does this omission fail to provide some suggestion or motivation to modify the reference or to combine reference teachings, it suggests that making the compounds of applicant's invention would not have been within the capabilities of one of ordinary skill in the art.

The Pfizer inventors could not combine their own art to arrive at applicant's invention. It is therefore suggested that the Examiner relied upon hindsight to arrive at the determination of obviousness, using the claimed invention as a template to piece together the teachings of the prior art to reject the claimed invention as obvious. One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fitch*, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

Based on the foregoing, it is respectfully submitted that Claims 1-3, 6-10, 12, 15, 38-40, and 53 are allowable over the art of record. A timely notice of allowance is respectfully requested.



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